IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 21ST NOVEMBER 2007 / 30TH KARTHIKA 1929

Bail Appl..No. 7096 of 2007()

SC 522/06 OF ADDL. ASSISTANT SESSIONS COURT, IRINJALAKUDA.
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PETITIONERS/ACCUSED NOS.11 AND 33
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1. IMTHIYAS, S/O HAMSA,
KATTIL HOUSE, MATTUMMEL,
CHAVAKKAD.

2. NAJEEB, S/O KUNHIMOIDEEN,
CHOKAKUPPATH HOUSE, VALAPPAD.

BY ADV. SRI.SUNNY MATHEW

RESPONDENTS: COMPLAINANT

STATE OF KERALA, THROUGH THE
SUB INSPECTOR OF POLICE,
VALAPPAD POLICE STATION, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 21/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 7096 OF 2007 B

Dated this the 21st day of November, 2007

O R D E R

Application for anticipatory bail. The petitioners are accused 11 and 33 in a pending sessions case. They faces indictment for offence punishable, inter alia, under section 307 read with 149 IPC. The petitioners were earlier enlarged on bail but consequent to their non appearance before the Sessions Court, warrants of arrest have been issued against the petitioners. They apprehend imminent arrest.

2. According to the learned counsel for the petitioners, the petitioners are absolutely innocent. Their absence earlier was not wilful or deliberate. The petitioners are willing to surrender before the learned Magistrate and seek regular bail. But they apprehend that their application for regular bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. They, therefore, pray that directions under Section 438 and/or 482 Cr.P.C. may be issued to the learned Magistrate to release the petitioners on bail when they appear and apply for bail.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the petitioners may be directed to surrender before the learned Magistrate and seek regular bail in the ordinary

course.

4. I have considered the relevant inputs. After the decision in **Bharath Chaudhary and another Vs. State of Bihar** [AIR 2003 SC 4662], it is by now trite that the powers under section 438 Cr.P.C. can be invoked in favour of a person who apprehends arrest in execution of a non-bailable warrant issued by a court in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist. I am not persuaded, in the facts and circumstances of this case, that any such reasons exist.

5. It is for the petitioners to appear before the learned Magistrate and explain to the learned Magistrate, the circumstances under which they could not earlier appear before the learned Magistrate. I find absolutely no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioners on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific directions appear to be necessary. Sufficient general directions have been issued in **Alice George vs. Deputy Superintendent of Police [2003(1)KLT 339].**

6. In the result, this petition is dismissed but with the specific observation that if the petitioners surrender before the learned Magistrate and apply for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed

to pass appropriate orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

(R.BASANT, JUDGE)

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